



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 14 2008

REPLY TO THE ATTENTION OF
C-14J

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Douglas J. Weber
Senior Attorney
FirstEnergy
76 South Main Street
Akron, OH 44308

RE: Administrative Consent Order between FirstEnergy and U.S. EPA, Region 5

Dear Mr. Weber:

Enclosed is the executed Administrative Consent Order between FirstEnergy and U.S. EPA, Region 5. We look forward to receiving the various responsive documents on July 17, 2008 and August 15, 2008.

Feel free to contact me at (312) 353-8917 or bending.padmavati@epa.gov if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Padmavati G. Bending".

Padmavati G. Bending
Associate Regional Counsel

Enclosure

electronic bcc w/encl:

Julie Morris (AE-17J)

Ethan Chatfield (AE-17J)

Seema Kakade (OECA)

Jerome MacLaughlin (DOJ-EES)

Stephen Mendoza (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	
)	
FirstEnergy Generation Corp.)	EPA-5-08-113(a)-OH-05
Akron, Ohio)	
)	
Proceeding Under Sections 113(a)(3),)	
114(a)(1) of the Clean Air Act,)	
42 U.S.C. §§ 7413(a)(3), 7414(a)(1))	
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Administrative Consent Order

1. The Acting Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, is issuing this Order to FirstEnergy Generation Corp. (FirstEnergy) under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

Statutory and Regulatory Background

2. The Administrator of EPA may require any person who owns or operates an emission source to provide information required by the Administrator under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Air and Radiation Division.

3. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating any requirement of an information request issued under Section 114 of the Act (Section 114 Request). The Administrator has delegated this authority to the Director of the Air and Radiation Division.

Findings

4. FirstEnergy and/or its subsidiaries own or operate the following coal-fired electric utilities which are located in Ohio: Ashtabula, Eastlake, Lake Shore, and Bay Shore generating stations.

5. FirstEnergy owns or operates an "emission source" within the meaning of Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). Therefore, FirstEnergy is subject to the requirements of Section 114(a)(1).

6. On November 10, 1999, the Director of the Air and Radiation Division, EPA, Region 5, issued a Section 114 Request to FirstEnergy and the following utilities: Ashtabula, Eastlake, Lake Shore, and Bay Shore generating stations.

7. The November 10, 1999, Section 114 Request required FirstEnergy to send a response to item numbers 1, 2, 3, and 12 through 24 in Attachment A within 30 calendar days, and the remainder of the information requested within 60 days after FirstEnergy received the Section 114 Request.

8. FirstEnergy received the Section 114 Request on November 15, 1999.

9. As a result, FirstEnergy's response to item numbers 1, 2, 3, and 12 through 24 was due on December 15, 1999, and to the remainder of the Section 114 Request was due on January 15, 2000.

10. In letter dated February 25, 2000, FirstEnergy provided a response to item numbers 2 and 3 to EPA.

11. EPA maintains that FirstEnergy violated the Section 114 Request by failing to send a complete response to the Section 114 Request within the time frame provided by the request.

12. On June 14, 2000, EPA issued to FirstEnergy a Finding of Violation for failure to send a complete response to the Section 114 Request within the timeframe provided by the request.

13. On May 7, 2008, EPA issued to FirstEnergy a Section 114 Request for Ashtabula, Eastlake, Lake Shore, and Bay Shore generating stations for the time period of 1999 to the present.

14. On May 16, 2008, EPA issued to FirstEnergy an Administrative Order alleging that it violated requirements of the November 10, 1999, Section 114 Request.

15. On June 12, 2008, representatives of FirstEnergy and EPA met to discuss the May 16, 2008, Administrative Order.

16. FirstEnergy proposed to respond to the May 7, 2008, Section 114 Request for the time period of 1978 to the present to address the November 10, 1999, Section 114 Request and the May 7, 2008, Section 114 Request.

17. On June 13, 2008, FirstEnergy provided a written request to integrate the 1999 and 2008 Section 114 Requests, and requested an extension of the dates for submitting the required information to EPA.

Compliance Program

18. By the following dates, FirstEnergy must submit the information requested in Appendix C under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1):

- a. Responses to paragraphs 1 and a list of the capital projects identified in paragraph 4 by June 30, 2008;
- b. Supplemental responses to paragraph 4 and responses to paragraphs 2, 3, 5, 6, 7, 8, 14, and 15 by July 17, 2008; and

c. The remainder of the information requested by August 15, 2008.

19. FirstEnergy must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

20. This Order resolves the May 16, 2008, Administrative Order and supersedes the November 10, 1999 Section 114 Request and May 7, 2008 Section 114 Request.

General Provisions

21. This Order does not affect FirstEnergy's responsibility to comply with other federal, state, and local laws.

22. This Order does not restrict EPA's authority to enforce Section 114 of the Act, or any other section of the Act.

23. Nothing in this Order limits the EPA's authority to seek appropriate relief, including penalties, under Section 113 of the Act, 42 U.S.C. § 7413, for FirstEnergy's violation of the Section 114 Request attached as Appendix A to C hereto.

24. Failure to comply with this Order may subject FirstEnergy to penalties of up to \$32,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

25. The terms of this Order are binding on FirstEnergy, its assignees and successors. FirstEnergy must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

26. FirstEnergy may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If FirstEnergy fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined at 40 C.F.R. § 2.301. Appendix A specifies the assertion and substantiation requirements for business confidentiality claims.

27. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

28. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action, to the extent relevant and admissible under the applicable rules of evidence. The information requested in Appendix C is not intended to apply to attorney-client communications, attorney work product, or other privileged communications under applicable rules of evidence.

29. Without any admission of fact or law or concession of any liability, FirstEnergy agrees to the terms of this Order.

30. This Order is effective on the date of signature by the Acting Director of the Air and Radiation Division. This Order will terminate one year from the effective date, provided that FirstEnergy has complied with all terms of the Order throughout its duration.

7/10/08
Date

Doug J. Weber
Douglas J. Weber
Attorney
FirstEnergy Generation Corp.

7/10/08
Date

Cheryl Newton
Cheryl Newton
Acting Director
Air and Radiation Division

Appendix A

Confidential Business Information (CBI) Assertion and Substantiation Requirements

1. Assertion Requirements

You may assert a business confidentiality claim covering all or part of the information requested in the attached letter, as provided in 40 C.F.R. § 2.203(b). To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document over which you make a claim of confidentiality should be marked by attaching a cover sheet stamped or typed with a legend to indicate the intent to claim confidentiality. The stamped or typed legend, or other suitable form of notice, should employ language such as "trade secret" or "proprietary" or "company confidential" and indicate a date if any when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by the United States Environmental Protection Agency only to the extent permitted and by means of the procedures set forth by Section 114(c) of the Clean Air Act (the Act), and 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as "Personal Privacy Information" given that disclosure of such information to the general public may constitute an invasion of privacy.

2. Substantiation Requirements

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.208 which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking you to substantiate fully your CBI claim. If you receive such a letter, you must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time would be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. If you receive such a letter, EPA will ask you to specify which portions of the information you consider confidential. **You must be specific by page, paragraph, and sentence when identifying the information subject to your claim.** Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to CBI, you must answer the following questions, giving as much detail as possible:

- a. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
- b. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
- c. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.
8. Any other issue you deem relevant.

Please note that emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2. "Emission data" means, with reference to any source of emission of any substance into the air-

Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from

any emission by the source), or any combination of the foregoing;

Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner and rate of operation of the source); and

A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 C.F.R. §§ 2.301(a)(2)(i)(A), (B) and (C).

Emission data includes, but is not limited to, service records stating the amount of refrigerant added to a unit or reclaimed from a unit.

If you receive a request for a substantiation letter from the EPA, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. In substantiating your CBI claim(s), you must bracket all text so claimed and mark it "CBI." Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

Appendix B

When providing the information requested in Appendix C, use the following instructions and definitions.

INSTRUCTIONS

1. Provide a separate narrative response to each question and subpart of a question set forth in the Information Request.
2. Precede each answer with the number of the question to which it corresponds and at the end of each answer identify the person(s) that provided information that was used or considered in responding to that question, as well as each person that was consulted in the preparation of that response.
3. Indicate on each document produced in response to this Information Request, or in some other reasonable manner, the number of the question to which it corresponds.
4. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
5. Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information is not available or in your possession and identify any source that either possesses or is likely to possess such information.

DEFINITIONS

All terms used in this Request for Information will have their ordinary meaning unless such terms are defined in the Act, 42 U.S.C. §§ 7401 et seq., 40 C.F.R. Part 52 (which incorporates the Federally-approved Stated Implementation Plan), or other Clean Air Act implementing regulations. Reference is made to the EPA regulatory provisions only; however, you should apply the applicable Federally-approved state provisions when appropriate. Definitional clarification is specified below.

1. The term “capital expenditure,” “capital appropriation,” or “capital project” means a monetary expenditure on depreciable equipment, including any costs to design, engineer, transport, and install said equipment.
2. The term “continuous emissions monitoring system” means the total equipment, required under the emission monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.
3. The terms “document” and “documents” shall mean any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any

kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these. If in computer format or memory, each such document shall be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy should also include attachments to or enclosures with any document.

4. The term "capital appropriation request" shall mean the document used by plant personnel in seeking management approval for planned capital expenditures at the facility. These documents are also known as authorizations for expenditure, capital requests or other, similar names.
5. The terms "relate to" or "pertain to" (or any form thereof) shall mean constituting, reflecting, representing, supporting, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating or relevant to.
6. The term "FirstEnergy" shall mean FirstEnergy Generation Corp., and all subsidiaries and related entities.

Appendix C

Provide the following information using the instructions and definitions provided in Appendix B for the East Lake, Lake Shore, Bay Shore and Ashtabula generating stations in Ohio:

1. For each coal-fired generating unit at these facilities, submit the emission unit identification number, the date construction of the facility commenced, the date or year commercial operation began, the original design capacity (MWg/MWn), current gross and net generating capacity (MWg/MWn), the original design and current maximum heat input capacity (mmBtu/hr), the original design and current steam flow output capacity (lbs steam/hr), the current operating status of each unit and, for any unit retired or inactive, the applicable date or year, current fuel(s) being fired, type of particulate emissions control and year installed, type of sulfur dioxide emissions control and year installed, and type of nitrogen oxides emissions control and year installed. For any unit at which the heat input, steam flow or generating capacity increased from the original design provide the dates such increases occurred and what physical or operational changes occurred resulting in such increases.
2. For all coal-fired generating units that currently physically exist at the facilities listed above, provide the dates during which any of the units were shutdown or idled (including units operated less than 100 hours per year) for a period of 24 consecutive months or greater. For each period provide the reason for the idle or shutdown, maintenance worked performed to restart the unit, any costs associated with restarting the units and all corresponding work orders.
3. For all currently active coal-fired generating units, provide monthly and annual total gross and net generation (MW-hr), monthly and annual average heat rate (BTU/KW-hr), monthly and annual average coal heat content (BTU/lb), fuel consumption, operating hours, and percent sulfur for all years from 1975 to present. Data must be provided in both Microsoft Excel-compatible electronic format and written copy.
4. For all currently active coal-fired generating units, provide a list of all capital projects of an amount greater than \$100,000 approved or completed between January 1, 1978 and the date of this request. For each such capital project, identify the work performed, the date completed or projected to be completed, the project work order number and the dollar amount approved and/or expended, and include a copy of the capital appropriation.
5. Provide a Microsoft Excel-compatible electronic copy of the Generating Availability Data System (GADs) data (or equivalent) for the period from January 1, 1978 to the date of this request identifying all boiler and turbine-related forced, maintenance and planned outages and curtailments for all currently active coal-fired generating units. Data should include unit information; start time, end time, and duration of event; event type; cause code of the event, and a description of the event.
6. Provide copies of the summary results pages of all stack tests for particulate matter, sulfur dioxide, nitrogen oxides, mercury, lead and hydrogen chloride for the period

January 1, 1978 to the date of this request for all currently active coal-fired generating units.

7. Provide copies of all Prevention of Significant Deterioration (PSD)/ New Source Review (NSR) permits received and permit applications submitted for the period January 1, 1978 to the date of this request. Also include a copy of all synthetic minor PSD/NSR permits that involve netting that allowed the facility to avoid major NSR/PSD requirements.
8. Provide copies of all reports, correspondence, memoranda and phone discussion summaries, etc. regarding PSD/NSR/New Source Performance Standards applicability for any modification undertaken between 1978 and the date of this request.
9. Provide copies of all life extension/life optimization/reliability enhancement, etc. studies, evaluations, assessments and reports related to extending the life of or increasing the reliability of any generating unit since January 1, 1978.
10. Provide copies of original design and current boiler cross-sectional diagrams.
11. Provide a list of the dates of replacement or partial replacements of burners, pulverizers, cyclones, economizers, reheaters and superheaters for each operating unit since January 1, 1978, as well as a copy of the capital authorization requests and work orders associated with each such project.
12. Provide copies of all load capacity/capability test data/test reports for each operating unit since January 1, 1978.
13. Provide copies of all reported generating capability for each unit for each year from 1978 to present, reported to any federal (e.g., Department of Energy), State (e.g., Public Utility Commission of Ohio) or local governmental body.
14. Provide a summary of the peak hourly generation (MWg) actually achieved during each month of operation for each unit from January 1, 1978 to present.
15. Provide a list of the entities that have owned the facility since January 1, 1978 and the dates of ownership.